

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MILADYS CELESTINO,

Petitioner,

MEMORANDUM OPINION
AND ORDER

-against-

11 Civ. 4651 (MGC)

UNITED STATES OF AMERICA,

Respondent.

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Cedarbaum, J.

On June 6, 2011, Miladys Celestino placed a petition for a writ of error coram nobis in the prison mail collection box. On October 14, 2011, I construed Celestino's application as a motion under 28 U.S.C. § 2255 and directed petitioner to show cause by affirmation within sixty days why the application was not time-barred. Celestino was also given sixty days to notify me in writing if she wished to withdraw the application. I denied the petition as time-barred on May 11, 2012. Celestino now moves for reconsideration of the denial of her prior petition. She asserts that she suffered prejudice because counsel failed to assist her in obtaining a plea offer.

Celestino's motion does not attack the holding that her § 2255 petition was time-barred. Rather, it attacks her underlying sentence. It is thus beyond the scope of a motion for reconsideration and is accordingly denied. See Gitten v.

United States, 311 F.3d 529, 534 (2d Cir. 2002). Furthermore, Celestino has not satisfied the standard for reconsideration, which may properly be granted only when the moving party can show that the court has "overlooked matters or controlling decisions which, had they been considered, might reasonably have altered the result." Donahue v. Pendleton Woolen Mills, Inc., 719 F. Supp. 149, 151 (S.D.N.Y. 1988) (citations and internal quotation marks omitted).

Since Celestino has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253(c). I certify pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith.

SO ORDERED.

Dated: New York, New York
October 4, 2012

S/ _____
MIRIAM GOLDMAN CEDARBAUM
United States District Judge